

Title 27

CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS

Notice of Proposed Action

[19-124-P]

The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays proposes to:

- (1) Amend Regulation .01 under **COMAR 27.01.01 General Provisions**;
- (2) Amend Regulations .06-1 and .06-3 under **COMAR 27.01.02 Development in the Critical Area**;
- (3) Amend Regulations .03 and .04 under **COMAR 27.01.09 Habitat Protection Areas in the Critical Area**;
- (4) Amend Regulation .01 under **COMAR 27.01.10 Directives for Local Program Development**;
- (5) Amend Regulation .01 under **COMAR 27.02.01 General Provisions**; and
- (6) Amend Regulations .04, .11, and .12 under **COMAR 27.02.05 State Agency Actions Resulting in Development on State-Owned Lands**.

This action was considered by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays at an open meeting held on May 1, 2019, pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to modernize the drafting style, update, and where necessary, delete certain outdated provisions. The amendments generally affect plant and wildlife habitat regulations and threatened and endangered species regulations where these regulations are located throughout COMAR Title 27. The proposal does not include any additional regulatory requirements of the affected regulated community.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Lisa Hoerger, Regulations Coordinator, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, 1804 West Street, Suite 100, Annapolis, MD 21401, or call 410-260-3478, or email to lisa.hoerger@maryland.gov, or fax to 410-974-5338. Comments will be accepted through August 5, 2109. A public hearing has not been scheduled.

Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT

27.01.01 General Provisions

Authority: Natural Resources Article, §§8-1806 and 8-1808(c), Annotated Code of Maryland

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(10) (text unchanged)

(11) *Colonial Nesting Water Bird*.

(a) "Colonial nesting water [birds]" means herons, egrets, terns and glossy ibis. For purposes of nesting, these birds congregate (that is, "colonize") in relatively few areas, at which time, the regional populations of these species are highly susceptible to local disturbances] *bird*" means a species of bird that, for the purpose of nesting, congregates, or colonizes, in relatively few areas.

(b) "Colonial nesting water bird" includes egrets, glossy ibises, herons, and terns.

(12)—(21-2) (text unchanged)

[(22) "Documented breeding bird areas" means forested areas where the occurrence of interior dwelling birds, during the breeding season, has been demonstrated as a result of on-site surveys using standard biological survey techniques.]

[(22-1)] (22) (text unchanged)

(23) (text unchanged)

(23-1) "Endangered species" means a species of flora or fauna whose continued viability is determined to be in jeopardy, in accordance with the provisions of:

(a) The federal Endangered Species Act of 1973, 16 U.S.C. §§1531-1544;

(b) Natural Resources Article, Title 4, Subtitle 2A or Title 10, Subtitle 2A, Annotated Code of Maryland; or

(c) COMAR 08.03.08.

[(23-1)] (23-2) (text unchanged)

(24) (text unchanged)

(25) Fishery Activity.

(a) ["Fisheries activities" means commercial water-dependent fisheries facilities] "Fishery activity" means a commercial water-dependent fishery operation, including [structures] a structure for the packing, processing, canning, or freezing of finfish, crustaceans, or mollusks[, and amphibians and reptiles and also including related activities such as wholesale and retail sales, product storage facilities, crab shedding, off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquaculture operations].

(b) "Fishery activity" includes a location where an activity related to a commercial water-dependent fishery operation occurs, such as wholesale and retail sale, product storage, crab shedding, off-loading, shellfish culture, or a shore-based facility necessary for an aquaculture operation.

(26) (text unchanged)

(27) "Forest interior dwelling [birds" means species of birds which require relatively large forested tracts in order to breed successfully (for example, various species of flycatchers, warblers, vireos, and woodpeckers)] bird" means a species of bird that requires relatively large forested tracts in order to breed successfully, such as various species of flycatchers, warblers, vireos, and woodpeckers.

(28)—(30) (text unchanged)

[(31) "Historic waterfowl staging and concentration area" means an area of open water and adjacent marshes where waterfowl gather during migration and throughout the winter season. These areas are "historic" in the sense that their location is common knowledge and because these areas have been used regularly during recent times.]

(32)—(37) (text unchanged)

(37-1) "Locally significant habitat" means a plant or wildlife habitat that may not be of Statewide significance but, in a local jurisdiction's Critical Area program, is considered to be significant in a local or regional context because the habitat contains a species:

(a) Uncommonly found or of limited occurrence in that area; or

(b) With an unusually high concentration in that area.

[(37-1)] (37-2) (text unchanged)

(38) Marina.

(a) "Marina" means [any] a commercial facility for the mooring, berthing, storing, or securing of [watercraft, but not including community piers and other noncommercial boat docking and storage facilities] vessels.

(b) "Marina" does not include a community pier, a private pier, or any other noncommercial facility for the docking or storage of vessels.

(39)—(51-1) (text unchanged)

(51-2) "Plant habitat" means a community of plants commonly identifiable by the composition of its vegetation and its physiographic characteristics, as covered in COMAR 27.01.09.04.

(52)—(64) (text unchanged)

(65) "Species in need of conservation" means [those fish and wildlife whose continued existence as part of the State's resources are in question and which may be designated by regulation] a species of fauna determined by the Secretary of Natural Resources [as] to be in need of conservation [pursuant to the requirements] measures for its continued ability to sustain itself successfully, in accordance with the provisions of:

(a) Natural Resources Article, [§§4-2A-03 and 10-2A-06] Title 4, Subtitle 2A, or Title 10, Subtitle 2A, Annotated Code of Maryland; or

(b) COMAR 08.03.08.

(66)—(67) (text unchanged)

(68) ["Thinning" means a forest practice used to accelerate tree growth of quality trees in the shortest interval of time] "Threatened species" means a species of flora or fauna that appears likely within the foreseeable future to become endangered, including a species determined to be a threatened species in accordance with the provisions of:

(a) The federal Endangered Species Act of 1973, 16 U.S.C. §§1531—1544;

(b) Natural Resources Article, Title 4, Subtitle 2A, or Title 10, Subtitle 2A, Annotated Code of Maryland; or

(c) COMAR 08.03.08.

(69)—(73) (text unchanged)

(73-1) "Vessel" has the meaning stated in Natural Resources Article, §8-701, Annotated Code of Maryland.

(74)—(76) (text unchanged)

(77) "Waterfowl" means [birds which frequent] *a species of bird that frequents* and often [swim] *swims* in water, [nest and raise their] *ests and raises its* young near water, and [derive] *derives* at least part of [their] *its* food from aquatic plants and animals.

(77-1) "Waterfowl staging and concentration area" means an area of open water and adjacent marshes where, as documented by the Department of Natural Resources, waterfowl gather during migration and throughout the winter season.

(78) (text unchanged)

(79) "Wildlife habitat" means a plant community and physiographic features that provide food, water and cover, nesting, and foraging or feeding conditions necessary to maintain a population of animals in the Critical Area, as described in COMAR 27.01.09.04.

27.01.02 Development in the Critical Area

Authority: Natural Resources Article, §8-1806, Annotated Code of Maryland

.06-1 Growth Allocation Submittal Requirements.

A. The Commission may not accept for processing a growth allocation request unless all of the following are provided at the time of submittal:

(1)—(5) (text unchanged)

(6) For the following resources, as appropriate for the project site and each government agency, a preliminary review and comment from the Department of the Environment, Department of Natural Resources, Maryland Historical Trust, and U.S. Army Corps of Engineers regarding:

(a) [Rare, threatened,] *Threatened* and endangered species, and *species in need of conservation*;

(b) Forest interior dwelling birds and colonial *nesting* water birds;

(c) (text unchanged)

(d) Plant and wildlife habitat and [historic] waterfowl staging and concentration areas;

(e)—(g) (text unchanged)

(7)—(8) (text unchanged)

B. The conceptual site development plan and environmental features map required under §A(3) and (4) of this regulation shall each include:

(1)—(20) (text unchanged)

(21) Identification and location of all wildlife habitat and plant habitat, including a nesting site of colonial nesting water birds, [an historic] *a* waterfowl staging and concentration area, *a* riparian habitat, *a* habitat of forest interior dwelling birds, [an area of State or local significance] *a locally significant habitat*, and a natural heritage area;

(22) Identification and location of habitat of threatened and endangered species, [including a] *and* species in need of conservation;

(23)—(28) (text unchanged)

.06-3 Requirements for New Intensely Developed Areas and Limited Development.

A.—F. (text unchanged)

G. When reviewing a map amendment or refinement involving the use of growth allocation, the Commission shall consider the following factors:

(1)—(4) (text unchanged)

(5) Consistency with State and regional environmental protection policies concerning the protection of threatened and endangered species, and species in need of conservation that may be located on-site or off-site;

(6)—(8) (text unchanged)

H. (text unchanged)

27.01.09 Habitat Protection Areas in the Critical Area.

Authority: Natural Resources Article, §8-1806, Annotated Code of Maryland

.03 Threatened and Endangered Species and Species in Need of Conservation.

[A. Definitions.

(1) "Species in need of conservation" means those fish and wildlife whose continued existence as a part of the State's resources are in question and which may be designated by regulation by the Secretary of Natural Resources as in need of conservation pursuant to the requirements of Natural Resources Article, §§10-2A-03 and 4-2A-03, Annotated Code of Maryland.

(2) "Threatened species" means any species of fish, wildlife, or plants designated as such by regulation by the Secretary of Natural Resources which appear likely, within the foreseeable future, to become endangered, including any species of wildlife or plant determined to be a "threatened" species pursuant to the federal Endangered Species Act, 16 U.S.C. §1531 et seq., as amended.

(3) "Endangered species" means any species of fish, wildlife, or plants which have been designated as such by regulation by the Secretary of Natural Resources. Designation occurs when the continued existence of these species as viable components of the State's resources are determined to be in jeopardy. This includes any species determined to be an "endangered" species pursuant to the federal Endangered Species Act, cited above.]

B. Policy. In developing [their] *and updating its* Critical Area [programs, local jurisdictions] *program, a local jurisdiction* shall provide protection for [those] *threatened and endangered species*, species in need of conservation [and threatened and endangered species], and their habitats [which occur] in the Critical Area.

C. Criteria. In developing [their] *and updating its* Critical Area [programs, the local jurisdictions] *program, a local jurisdiction* shall use [all of] the following criteria [with regard to species in need of conservation and threatened or endangered species]:

(1) [Local jurisdictions shall develop programs for the protection] *Protection* of the habitats of *threatened and endangered species and species in need of conservation* [and threatened and endangered species. These programs should be developed using] *in cooperation with the expertise of the* [Forestry Programs, the Fish, Heritage and Wildlife Administration,] *Department of Natural Resources* and other appropriate public agencies and private organizations.

(2) These programs shall consist of *at least one* [or both] of the following elements:

(a) Designation of a protection area around each of the habitats occurring in the jurisdiction within which development [activities] and other disturbances shall be prohibited, unless it can be shown that [these activities] *the development or* [disturbances] *disturbance* will not have or cause adverse impacts on these habitats; *or*

(b) [Development of programs for providing protection for] *Protection* of the habitats of *threatened and endangered species and species in need of conservation* [and endangered and threatened species which may include, but are not limited to,] *by means of acquisition, conservation easements, cooperative agreements with landowners, special provisions in forest management and soil conservation plans, [and special provisions in subdivision or zoning regulations] or other methods approved by the Commission.*

(3) The determination of the existence and extent of these habitats and protection areas shall result from a cooperative effort between the local jurisdiction and the public agencies or private organizations noted above, but no designation of habitat and protective measures shall be accomplished unless the affected public is given an adequate opportunity to be heard at the local level. A local jurisdiction's public hearing on its proposed Critical Area program may be used to satisfy this requirement, if full notice of the proposed habitat management program is included in the general notice of the hearing. If the Secretary of Natural Resources designates additional species by regulation in the future, additional local public hearings, as appropriate, shall be held to consider comments on the protection measures proposed for these species. The protection measures shall be adopted within 12 months of the date of the Secretary's designation.]

.04 Plant Habitat and Wildlife Habitat.

[A. Definitions.

(1) "Plant habitat" means a community of plants commonly identifiable by the composition of its vegetation and its physiographic characteristics as described below in §C.

(2) "Wildlife habitat" means those plant communities and physiographic features that provide food, water and cover, nesting, and foraging or feeding conditions necessary to maintain populations of animals in the Critical Area as described in §C of this regulation.]

B. Policies. In developing [their] *and updating its* Critical Area [programs, local jurisdictions] *program, a local jurisdiction* shall [use the following policies with regard to plant and wildlife habitat]:

(1) Conserve *plant and wildlife* [habitat] *habitats* in the Critical Area;

(2) Protect [those] *plant and wildlife* habitats that tend to be least abundant or which may become [so] *less abundant* in the future if current [land-use] *land use* trends continue;

(3) Protect [those] *plant and wildlife* [habitat types] habitats which are required to support the continued presence of [various] *species protected under the provisions of Natural Resources Article, Title 8, Subtitle 18, Annotated Code of Maryland, and this title;*

(4) Protect [those] *plant and wildlife* [habitat types and plant communities] *habitats* which are determined [by local jurisdictions to be of local significance] *to be locally significant habitats;* and

(5) (text unchanged)

C. Criteria. In developing [their] *and updating its* Critical Area [programs, the local jurisdictions] *program, a local jurisdiction* shall [use all of the following criteria]:

(1) [The local jurisdictions shall develop] *Include* a plant and wildlife habitat protection program as an element of [their] *its* Critical Area program. [These programs are to] *Each program shall* be developed using the expertise of the [Forestry Programs, the Tidewater Administration, Fish, Heritage and Wildlife Administration] *Department of Natural Resources, the U.S. Fish and Wildlife Service, other appropriate agencies, and adjacent jurisdictions.*

(2) [Each] *Ensure that each* plant and wildlife habitat protection program [shall consist] *consists of* [the following]:

(a) Identification of the following plant and wildlife habitats in the Critical Area:

(i) [Colonial] *Nesting sites of colonial nesting water* [bird nesting sites] *birds;*

(ii) [Historic waterfowl] *Waterfowl* staging and concentration areas in tidal waters, tributary streams, or tidal and nontidal wetlands;

(iii) Existing riparian forests [(for example, those], *such as* relatively mature forests of at least 300 feet in width which occur adjacent to streams, wetlands, or the [Bay] *shoreline*], and which are documented breeding areas)] *of the Chesapeake Bay, the Atlantic Coastal Bays, or their tributaries;*

(iv) [Forest areas] *Forests* utilized as breeding areas by forest interior dwelling birds and other wildlife species [(for example), *such as* relatively mature [forested areas]*forests* within the Critical Area of 100 acres or more, or forest connected with these [areas]] *breeding areas*;

(v) Other areas which may in the future be identified by State and federal agencies as important plant or wildlife habitat [areas];

(vi) (text unchanged)

(vii) [Natural] *Designated natural* heritage areas [which have been designated].

(b) [Establishment of programs for conserving or protecting] *Programs to conserve or protect* the plant and wildlife [habitat areas] *habitats* identified [above] in §C(2)(a) of this regulation. [These programs, and the protection measures suggested below, should accomplish the following objectives] *Program objectives should include*:

(i) [Establish buffer areas for colonial water bird (heron, egret, tern and glossy ibis) nesting sites] *The establishment of buffers for nesting sites of colonial nesting water birds* so that these sites are protected from the adverse impacts of development [activities] and from disturbance during the breeding season.

(ii) [Provide that] *The location of* new water-dependent facilities [are so located] *so* as to prevent disturbance to sites of significance to [wildlife] *wildlife*, such as [historic,] aquatic staging and concentration areas for waterfowl.

(iii) [Provide protection measures] *Protection measures*, including a buffer [area] where appropriate, for other plant and wildlife [habitat sites] *habitats* identified in §C(2)(a)(v) of this regulation.

(iv) [Protect and conserve those forested areas] *Protection and conservation of forests* required to support wildlife species identified [above] in §C(2)(a)(iii) and [(iv),] (iv) of this regulation by developing management programs which have as their [objective, conserving the] *objective the conservation of* wildlife that inhabit or use the areas. The programs should assure that development [activities,] or the clearing or cutting of trees [which might occur in the areas,] is conducted so as to conserve riparian [habitat,] *habitat and* forest interior [wildlife species,] *dwelling birds* and their habitat. Management measures may include incorporating appropriate wildlife protection elements into forest management plans, [and] cluster [zoning] *zoning*, or other site design criteria which provide for the conservation of *plant and* wildlife habitat. Measures may also include soil conservation plans that have *plant and* wildlife habitat protection provisions appropriate to the areas [defined above,] *identified in §C(2)(a)(iii) and (iv) of this regulation* and incentive programs which use the acquisition of easements and other similar techniques.

(v) [Require, to the extent practical, that when development activities, or the cutting or clearing of trees, occurs in forested areas] *When development or cutting or clearing of trees occurs in a forest, a requirement that, to the extent practicable, corridors of existing forest or woodland vegetation be maintained to provide effective connections [between]among* wildlife [habitat areas] *habitats*.

(vi) [Protect by appropriate means those] *The protection of* plant and wildlife habitats considered to be [of significance by local jurisdictions. (Examples of these areas are those whose habitat values may not be of Statewide significance but are of importance locally or regionally because they contain species uncommon or of limited occurrence in the jurisdiction, or because the species are found in unusually high concentrations.)) *locally significant habitats*.

(vii) [Protect natural heritage areas] *The protection of a natural heritage area* from alteration [due to] *resulting from* development [activities] or cutting or clearing so that the structure and species composition of the [areas] *area* are maintained.

(c) The determination of the existence and extent of [these] plant and wildlife [habitats,] *habitats* and the development of appropriate protection measures for these [areas,] *habitats* shall result from a cooperative effort [between the] *among* a local jurisdiction [and the], public agencies [or], *and* private organizations [noted above]. [Designation of habitat and protective measures may not be accomplished unless the affected public is given an adequate opportunity to be heard. A local jurisdiction's public hearing on its proposed Critical Area program may be used to satisfy this requirement, if full notice of the proposed habitat management program is included in the general notice of the hearing. If additional plant and wildlife habitat areas are designated in the future, local public hearings, as appropriate, shall be held to consider comments on the areas and protection measures proposed.]

27.01.10 Directives for Local Program Development

Authority: Natural Resources Article, §§8-1806 [and], 8-1808(c), and 8-1811, Annotated Code of Maryland

.01 Criteria.

In developing [their] *and updating its* Critical Area [Programs, local jurisdictions] *program, a local jurisdiction* shall use the following general program criteria:

A. [Each] *In accordance with the following requirements, each* jurisdiction shall inventory or [map] *map*, or both, [certain] *or identify the most recently completed inventory or map, or both, of a federal or State agency in order to monitor the* natural resources [of] *and resource-based uses located within its Critical [Area.] Area*:

(1) The inventory shall include [the following resources (as defined in the appropriate foregoing chapters of this subtitle concerning specific criteria)]:

[(1)] (a) — [(6)] (f) (text unchanged)

[(7)] (g) Known [threatened and endangered species habitats as well as habitats of species in need of conservation] *habitats of threatened and endangered species, and species in need of conservation*;

[(8)] (h) The watersheds of anadromous fish [spawning streams] *propagation waters*;

[(9)] (i) Plant and wildlife habitats;

[(10)] (j) Steep slopes; and

[(11)] (k) Soils with development constraints; and

[(12)] Intensely developed, limited development, and resource conservation areas as defined in COMAR 27.01.02.]

(2) *Mapping of resources and resource-based uses listed under §A(1) of this regulation shall be at a scale that is relevant to the local jurisdiction and of sufficient detail to assess the potential impacts of proposed land use changes on the quality and quantity of local water resources and on local wildlife and plant habitats.*

B. [Any such mapping shall be at a scale that is relevant to local jurisdictions and of sufficient detail to assess the potential impacts of proposed land-use changes on the quality and quantity of local water resources and on local wildlife and plant habitats] *The mapping of intensely developed, limited development, and resource conservation areas shall be in accordance with Natural Resources Article, §8-1807, Annotated Code of Maryland, and COMAR 27.01.02.*

[C. Each program submission shall list the specific local program objectives and an expected time schedule for implementation.]

D.—P. (text unchanged)

Subtitle 02 DEVELOPMENT IN THE CRITICAL AREA RESULTING FROM STATE AND LOCAL AGENCY PROGRAMS

27.02.01 General Provisions

Authority: Natural Resources Article, §§8-1806 and 8-1808(c), Annotated Code of Maryland

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(8-1) (text unchanged)

(9) “Colonial nesting water [birds]” means herons, egrets, and terns, and glossy ibis. For purposes of nesting, these birds congregate (that is, “colonize”) in relatively few areas, at which time, the regional populations of these species are highly susceptible to local disturbances] *bird” has the meaning stated in COMAR 27.01.01.01.*

(10)—(15) (text unchanged)

[(16)] “Documented breeding bird areas” means forested areas where the occurrence of interior dwelling birds, during the breeding season, has been demonstrated as a result of on-site surveys using standard biological survey techniques.]

[(17)] (16) (text unchanged)

(17) “Endangered species” has the meaning stated in COMAR 27.01.01.01.

(18) (text unchanged)

(19) [“Fisheries activities” means commercial water-dependent fisheries facilities including structures for the packing, processing, canning, or freezing of finfish, crustaceans, mollusks, and amphibians and reptiles and also including related activities such as wholesale and retail sales, product storage facilities, crab shedding, off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquaculture operations] *“Fishery activity” has the meaning stated in COMAR 27.01.01.01.*

(20) (text unchanged)

(21) “Forest interior dwelling [birds]” means species of birds which require relatively large forested tracts in order to breed successfully (for example, various species of flycatchers, warblers, vireos, and woodpeckers)] *bird” has the meaning stated in COMAR 27.01.01.01.*

(22)—(24) (text unchanged)

[(25)] “Historic waterfowl staging and concentration area” means an area of open water and adjacent marshes where waterfowl gather during migration and throughout the winter season. These areas are “historic” in the sense that their location is common knowledge and because these areas have been used regularly during recent times.]

[(26)] (25)—[(29-1)] (29) (text unchanged)

(30) “Marina” [means any facility for the mooring, berthing, storing, or securing of watercraft, but not including community piers and other noncommercial boat docking and storage facilities] *has the meaning stated in COMAR 27.01.01.01.*

(31)—(40-1) (text unchanged)

(40-2) “Plant habitat” has the meaning stated in COMAR 27.01.01.01.

(41)—(50) (text unchanged)

(51) “Species in need of conservation” [means those fish and wildlife whose continued existence as part of the State’s resources are in question and which may be designated by regulation by the Secretary of Natural Resources as in need of conservation pursuant to the requirements of Natural Resources Article, §§4-2A-03 and 10-2A-06, Annotated Code of Maryland] *has the meaning stated in COMAR 27.01.01.01.*

(52)—(54) (text unchanged)

(55) [“Thinning” means a forest practice used to accelerate tree growth of quality trees in the shortest interval of time] *“Threatened species” has the meaning stated in COMAR 27.01.01.01.*

(56)—(62) (text unchanged)

(63) “Waterfowl” [means birds which frequent and often swim in water, nest and raise their young near water, and derive at least part of their food from aquatic plants and animals] *has the meaning stated in COMAR 27.01.01.01.*

(63-1) “Waterfowl staging and concentration area” has the meaning stated in COMAR 27.01.01.01.

[(63-1)] (63-2) (text unchanged)

(64) (text unchanged)

(65) "Wildlife habitat" has the meaning stated in COMAR 27.01.01.01.

27.02.05 State Agency Actions Resulting in Development on State-Owned Lands

Authority: Natural Resources Article, §8-1806, Annotated Code of Maryland

.04 Water-Dependent Facilities.

A. Definitions.

(1) "Vessel" has the meaning stating in Natural Resources Article, §8-701, Annotated Code of Maryland.

[(1)] (2) (text unchanged)

[(2)] "Buffer" means an existing, naturally vegetated area, or an area established in vegetation and managed to protect aquatic, wetlands, shoreline, and terrestrial environments from man-made disturbances.]

B. (text unchanged)

.11 Threatened and Endangered Species and Species in Need of Conservation.

[A. Definitions.

(1) "Species in need of conservation" means those fish and wildlife whose continued existence as a part of the State's resources are in question and which may be designated by regulation by the Secretary of Natural Resources as in need of conservation pursuant to the requirements of Natural Resources Article, §§10-2A-03 and 4-2A-03, Annotated Code of Maryland.

(2) "Threatened species" are any species of fish, wildlife, or plants designated as such by regulation by the Secretary of Natural Resources which appear likely, within the foreseeable future, to become endangered, including any species of wildlife or plant determined to be a "threatened" species pursuant to the federal Endangered Species Act, 16 U.S.C. §1531 et seq., as amended.

(3) "Endangered species" are any species of fish, wildlife, or plants which have been designated as such by regulation by the Secretary of Natural Resources. Designation occurs when the continued existence of these species as viable components of the State's resources are determined to be in jeopardy. This includes any species determined to be an "endangered" species pursuant to the federal Endangered Species Act, cited above.]

B. Criteria. When planning or proposing development [or redevelopment] on State-owned lands within the Critical Area, the agency proposing the development shall [use the following criteria]:

(1) [The agency shall identify, with] *With the assistance of the Department of Natural Resources, identify* any habitats of threatened or endangered species, or species in need of conservation[,] that may be affected by the development;

(2) [The agency shall develop] *Utilizing the expertise of the Department of Natural Resources, develop* programs [for the protection of] *to protect* the habitats of *threatened and endangered species and* species in need of conservation [and threatened and endangered species] as [may be] identified in §B(1) of this regulation]. These programs should be developed using the expertise of the Maryland Department of Natural Resources]; *and*

(3) [These programs shall consist of one or both] *Ensure that these programs consist of at least one of the following elements:*

(a) Designation of a protection area around each of the habitats within which development [activities] and other disturbances [shall be] *are* prohibited, unless it can be shown that [these activities or disturbances] *the development or other disturbance* will not have or cause adverse impacts on these habitats[,] *and*

(b) [Development of programs for providing protection for] *Protection of* habitats of *threatened and endangered species, and* species in need of conservation [and endangered and threatened species], which may include[, but are not limited to,] special provisions in forest management and soil conservation plans, and [special provisions in] any *other* management programs for the State-owned lands on which the habitats occur.

.12 Plant *Habitat* and Wildlife Habitat.

[A. Definitions.

(1) "Plant habitat" means a community of plants commonly identifiable by the composition of its vegetation and its physiographic characteristics as provided in §B of this regulation.

(2) "Wildlife habitat" means those plant communities and physiographic features that provide food, water and cover, nesting, and foraging or feeding conditions necessary to maintain populations of animals in the Critical Area as provided in §B, below.]

B. Criteria. When planning or proposing development [or redevelopment] on State-owned lands within the Critical Area, the agency proposing the development shall [use the following criteria for plant and wildlife habitat]:

(1) [The agency, with] *With the assistance of the Department of Natural Resources, [shall] identify* the following plant and wildlife habitats that may be affected by the development:

(a) [Colonial water bird nesting sites] *Nesting sites of colonial nesting water birds;*

(b) [Historic waterfowl] *Waterfowl* staging and concentration areas in tidal waters, tributary streams, or tidal and nontidal wetlands;

(c) Existing riparian forests [(for example, those], *such as* relatively mature forests of at least 300 feet in width which occur adjacent to streams, wetlands, or the [Bay] shoreline[, and which are documented breeding areas)] *of the Chesapeake Bay, the Atlantic Coastal Bays, or their tributaries;*

(d) Forest areas utilized as breeding areas by forest interior dwelling birds and other wildlife species [(for example], *such as* relatively mature forested areas within the Critical Area of 100 acres or more, or forest connected with these [areas)] *areas;*

(e) Other areas which may in the future be identified by State and federal agencies as important plant or wildlife habitat [areas]; and

(f) [Natural] *Designated natural* heritage areas [which have been designated].
(2) (text unchanged)

CHARLES DEEGAN
Chairman